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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,692	05/15/2007	Hye Won Lee	Q96956	9037

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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER	
CHEN, CATHERYNE	

ART UNIT	PAPER NUMBER
1655	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/598,692	LEE ET AL.	
	Examiner	Art Unit	
	CATHERYNE CHEN	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 4-9* is/are pending in the application.

4a) Of the above claim(s) *9* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 4-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The Amendments filed on Dec. 18, 2008 has been received and entered. Currently, Claims 1, 4-9 are pending. Claims 1, 4-8 are examined on the merits. Claims 2-3 are canceled.

Election/Restrictions

Applicant's election without traverse of Group I (Claims 1, 4-8), the species fruit and yoghurt and strawberry, in the reply filed on April 25, 2008 is acknowledged.

Claim 9 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 25, 2008.

Response to Amendment

Specification

The amendment filed Dec. 18, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

The term "facial mask" was not present in the original Specification filed. The term "skin care pack" itself does not indicate it is a "facial mask."

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 4-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In Claim 1, the term "lumpy texture" is not present in the Specification; thus, there is no support for this limitation in the claim. This term is new matter and must be canceled.

Appropriate correction is required.

Response to Arguments

Applicant's arguments with respect to claims 1, 4-8 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gennadios (US 6214376 B1) in view of Kitchencraftsnmore (http://web.archive.org/web/20031208031644/http://kitchencraftsnmore.net/bath3.html).

Gennadios teaches cosmetic application prepared from compositions comprising 0.25% locust bean gum and 0.25% xanthan gum (column 8, lines 27-28). Locust bean gum is also a type of mannan gum (column 4, lines 11-12). The ratio of xanthan gum to mannan gum is 1:1. Xanthan gum and mannan gums are used to form gels (column 3, lines 57-60).

However, it does not teach lumpy texture and curd yoghurt.

Kitchencraftsnmore teaches 2 tablespoons of plain yogurt with ½ teaspoon of lemon juice (page 1, Aging Skin Fighter) and 1 tablespoon of yogurt with a few strawberries are blended in a food process or blender and applied to the face (page 2, Almonds and Beeries Facial Mask). Lemon juice added to yogurt increases the acidity

of the yogurt and will cause yogurt to become lumpy due to over curdling of the yogurt. Thus, lumpy curdling yogurt is taught.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use xanthan gum and mannan on the lumpy yogurt composition of Kitchencraftsnmore because yogurt is viscous that can be used to increase the gelling ability of xanthan gum and mannan gum for cosmetic use. One would have been motivated to put yogurt into xanthan gum and mannan cosmetic composition for the expected benefit of thickening a composition for application to skin. Absent evidence to the contrary, there would have been a reasonable expectation of success in making the claimed invention from the combined teachings of the cited references.

Claims 1, 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gennadios (US 6214376 B1) in view of Kitchencraftsnmore (http://web.archive.org/web/20031208031644/http://kitchencraftsnmore.net/bath3.html) as applied to claim 1 above, and further in view of Bourriot et al. (FR 2811997 A1).

The teachings of Gennadios and Kitchencraftsnmore are set forth above and applied as before.

The combination of Gennadios and Kitchencraftsnmore do not specifically teach the starch and concentration.

Bourriot et al. teaches composition for cosmetic formulation with starch at 10-50 wt% (Abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use xanthan gum and mannan because starch is a thickener that

can be used to increase the viscosity of the xanthan gum and mannan composition for cosmetic use. One would have been motivated to make starch into xanthan gum and mannan cosmetic composition for the expected benefit of thickening a composition for application to skin. Absent evidence to the contrary, there would have been a reasonable expectation of success in making the claimed invention from the combined teachings of the cited references.

The references do not specifically teach adding the ingredients in the amounts claimed by applicant. However, the references do teach the composition for cosmetic application. Gennadios teaches cosmetic application prepared from compositions comprising 0.25% locust bean gum and 0.25% xanthan gum (column 8, lines 27-28). Bourriot et al. teaches composition for cosmetic formulation with starch, at 10-50 wt% (Abstract). The ratio of starch to 0.5% of xanthan gum and mannan gum would be from 20-100 the weight. The amount of a specific ingredient in a composition that is used for a particular purpose (the composition itself or that particular ingredient) is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, optimization of general conditions is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the

claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

Claims 1, 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gennadios (US 6214376 B1), Kitchencraftsnmore (http://web.archive.org/web/20031208031644/http://kitchencraftsnmore.net/bath3.html), Bourriot et al. (FR 2811997 A1) as applied to claims 1 and 4 above, and further in view of Giddey et al. (US 5053219).

The teachings of Gennadios, Kitchencraftsnmore, and Bourriot et al. are set forth above and applied as before.

The combination of Gennadios, Kitchencraftsnmore, and Bourriot et al. do not specifically teach yoghurt powder.

Giddey et al. teaches cosmetic composition containing yogurt in powder form (column 2, lines 21-22).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use powdered yogurt to make the lumpy yogurt composition of Kitchencraftsnmore because yogurt powder can be adjusted to different viscosity and lumpiness for cosmetic use. One would have been motivated to make powdered yogurt into yogurt cosmetic composition for the expected benefit of thickening a composition for application to skin. Absent evidence to the contrary, there would have been a reasonable expectation of success in making the claimed invention from the combined teachings of the cited references.

The references also do not specifically teach formulating the composition in the form claimed by applicant. These pharmaceutical forms are well known in the art to be acceptable means of administering a pharmaceutically active substance. Based on this knowledge, a person of ordinary skill in the art would have had a reasonable expectation that formulating the composition taught by the references in the claimed forms would be successful. Therefore, an artisan of ordinary skill would have been motivated to formulating the composition taught by the reference in the forms claimed by applicant. Such reasonable expectation would provide motivation to use a pack formulation.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CATHERYNE CHEN whose telephone number is (571)272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catheryne Chen
Examiner Art Unit 1655

/Michael V. Meller/
Primary Examiner, Art Unit 1655